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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,857	12/08/2003	Andrew John Cardno	83336.1710	1227
66880 7590 12/28/2009 STEPTOE & JOHNSON, LLP 2121 AVENUE OF THE STARS SUITE 2800 LOS ANGELES, CA 90067				
EXAMINER NUNEZ, JORDANY				
ART UNIT 2175		PAPER NUMBER		
NOTIFICATION DATE 12/28/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/728,857

**Applicant(s)**

CARDNO, ANDREW JOHN

**Examiner**

Jordany Núñez

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 8-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1448 or PTO-600) Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-5, 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al. (US592261, hereinafter Hughes) in view of Wong (US6343275).

As to claims 1, 8:

Hughes shows a data analysis system, and corresponding method, embodied on a computer readable storage medium comprising:

an interaction database maintained in computer memory, the interaction database comprising interaction data representing interactions between customers and merchants (column 6, lines 40-56) (e.g., object location is monitored and object location is entered into a database);

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a spatial display component configured to display a spatial graphic of at least part of the physical layout of a commercial premise of a merchant (figs. 40, 41) (e.g., a layout of the store is displayed);

a retrieval component configured to retrieve from the interaction database a plurality of data values representing interactions between customers and merchants (column 20, lines 20-35) (e.g., sales are used to display zones that have higher value assigned to it);

a contour generator configured to generate and superimpose a representation of the data values on the spatial graphic (figs. 40, 41) (e.g., zones of the physical layout of the store are displayed having different values according to sales);

a user selection component configured to enable a user to select part of the spatial graphic (column 20, lines 18-25) (e.g., zones can be set according to user criteria); and

a data display component configured to superimpose a representation of interactions between customers and merchants associated with the part of the spatial graphic selected by the user (e.g., zones of the physical layout of the store are displayed having different values according to sales) (column 20, lines 20-35).

Hughes fails to specifically show: wherein the contour generator is configured to generate and display a representation of one or more of the data values centered on respective data points such that one or more of the data points is displayed as a local maximum; and wherein the contour generator is configured to generate and display data points corresponding to the data values and one or more contour lines around one or more of the data points, each contour line representing data values which are less than the data value of the data point around which the contour line is displayed.

In the same field of invention, Wong teaches: an integrated business-to-business web commerce system. Wong further teaches: a contour generator being configured to generate and display a contoured representation of one or more of the data values centered on respective data points such that one or more of the data points is displayed as a local maximum (see figure 113 for example); and the contour generator is configured to generate and display data points corresponding to the data values on one or more contour lines around one or more of the data points, each contour line representing data values which are less than the data value of the data point around which the contour line is displayed (see figure

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113 for example) (e.g., Wong teaches displaying reports which take as input sales information; the report shows contour lines representing "cash in back #1" and "trade accounts payable" , and data points which go from 1000 to 15000).

Thus, it would have been obvious to one of ordinary skill in the art, having the teachings of Hughes and Wong at the time that the invention was made, to have combined the teachings of Wong with the system and method as taught by Hughes.

One would have been motivated to make such combination because a way to automate to the greatest degree possible various aspects of running a profitable business would have been obtained and desired, as expressly taught by Wong (column 4, lines 1-6).

As to claims 2, 9, Hughes shows:

wherein the merchant provides a plurality of products to customers (col. 19, l. 56-66) (e.g., levi pants, nike shoes), the spatial graphic comprising representations of one or more of the products corresponding to the spatial position of the products within the physical commercial premise of the merchant (column 20, lines 3-7).

As to claims 3, 10, Hughes shows:

wherein the user selection component is configured to enable a user to select a product, in the spatial graphic (column 19, lines 21-30).

As to claims 4, 11, Hughes shows:

wherein the representation generated by the data display component is associated with the product selected by the user (column 20, lines 35-40; column 19, lines 21-30) (e.g., sale data may be determined by following an object in question may be to the check-out counter; thus, the profit per fixture of an associated tagged merchandise is displayed in a 3D environment).

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As to claims 5, 12, Hughes shows:

wherein the representation displays interactions between customers and merchants involving the product selected by the user (column 20, lines 31-40).

References to specific columns, figures or lines should not be limiting in any way. The entire reference provides disclosure related to the claimed invention.

### ***Response to Arguments***

Applicant's arguments have been fully considered but are not persuasive. Examiner reiterates that references to specific columns, figures or lines should not be limiting in any way. The entire reference provides disclosure related to the claimed invention.

Applicant argues:

1) FIG. 113 of Wong is a report graph screen with data values charted over time. The data points in this graph are shown with a square or circle indicating whether the data value represents "cash in bank #1" or "trade accounts payable," respectively. In FIG. 113, there are no contour lines or any other types of lines that are disposed around the data points that represent another data value that is less than the data point. Review of the Wong reference did not produce any disclosure of generating and displaying contour lines representing a data value less than the data value of the data point surrounded by the contour lines as recited in claim 1. Therefore, for this additional reason, Applicant respectfully submits that claim 1, and those claims that depend therefrom, are also allowable over Hughes in view of Wong (page 6, antepenultimate paragraph).

Examiner disagrees.

As to 1), In FIG. 113, there are contour lines that are disposed around (e.g., adjacent to, close to) the data points (e.g., which go from 0 to 15000) that represent another data value that is less than the data point (e.g., the data point of 12000). Further, the Wong reference does disclose generating and displaying contour lines (e.g., cash in bank #1, trade accounts payable) representing a data value less than the data value of the data point (e.g., the data point of 12000) around (e.g., adjacent to, close to) the

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contour lines as recited in claim 1. Finally, neither Applicant's specification nor its claims describe a "data point surrounded by the contour lines," thus no weight may be given to that argument.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Busche et al. [U.S. 20030055707]

Pekowski et al. [U.S. 6557007]

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordany Núñez whose telephone number is (571)272-2753. The examiner can normally be reached on Monday Through Thursday 9am-7:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor: William Bashore can be reached on (571) 272-4088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JN  
12/9/2009

/William L. Bashore/  
Supervisory Patent Examiner, Art Unit 2175